

**§ 158.11 Public agency request not to require collection of PFC's by a class of air carriers or foreign air carriers or for service to isolated communities.**

(a) Subject to the requirements of this part, a public agency may request that collection of PFC's not be required for—

(1) Passengers enplaned by any class of air carrier or foreign air carrier if the number of passengers enplaned by the carriers in the class constitutes not more than one percent of the total number of passengers enplaned annually at the airport at which the fee is imposed; or

(2) Passengers enplaned on a flight to an airport—

(i) That has fewer than 2,500 passenger boardings each year and receives scheduled passenger service; or

(ii) In a community that has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State.

(b) The public agency may request this exclusion authority under paragraph (a)(1) or (a)(2) of this section or both.

[Doc. No. FAA-2000-7402, 65 FR 34541, May 30, 2000]

**§ 158.13 Use of PFC revenue.**

PFC revenue, including any interest earned after such revenue has been remitted to a public agency, may be used only to finance the allowable costs of approved projects at any airport the public agency controls.

(a) *Total cost.* PFC revenue may be used to pay all or part of the allowable cost of an approved project.

(b) *Bond-associated debt service and financing costs.* (1) PFC revenue may be used to pay debt service and financing costs incurred on that portion of a bond issued to carry out approved projects.

(2) If bond documents require that PFC revenue be commingled in the general revenue stream of the airport controlled by the public agency and pledged generally for the benefit of holders of obligations issued thereunder, PFC revenue is deemed to have been used to pay the costs covered in § 158.13 (b)(1) if—

(i) An amount equal to that portion of the proceeds of the bond issued to carry out approved projects is used to pay allowable costs of such projects; and

(ii) To the extent that the amount of PFC revenue collected in any year exceeds the amount of debt service and financing costs on such bonds during that year, an amount equal to the excess is applied as required by § 158.39.

(c) *Combination of PFC revenue and Federal grant funds.* A public agency may use a combination of PFC revenue and airport grant funds to accomplish an approved project. Such projects shall be subject to the recordkeeping and auditing requirements set forth in subpart D of this part, in addition to the reporting, recordkeeping and auditing requirements imposed pursuant to the Airport and Airway Improvement Act of 1982 (AAIA).

(d) *Non-Federal share.* PFC revenue may be used to meet the non-Federal share of the cost of projects funded under the Federal airport grant program.

(e) *Approval of project following approval to impose a PFC.* The public agency shall not use PFC revenue or interest earned thereon except on an approved project.

**§ 158.15 Project eligibility at PFC levels of \$1, \$2, or \$3.**

(a) To be eligible, a project must—

(1) Preserve or enhance safety, security, or capacity of the national air transportation system;

(2) Reduce noise or mitigate noise impacts resulting from an airport; or

(3) Furnish opportunities for enhanced competition between or among air carriers.

(b) Eligible projects are any of the following projects—

(1) Airport development eligible under subchapter I of chapter 471 of 49 U.S.C.;

(2) Airport planning eligible under subchapter I of chapter 471 of 49 U.S.C.;

(3) Terminal development as described in 49 U.S.C. 47110(d);

(4) Airport noise compatibility planning as described in 49 U.S.C. 47505;

(5) Noise compatibility measures eligible for Federal assistance under 49 U.S.C. 47504, without regard to whether

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the measures have been approved pursuant to 49 U.S.C. 47504; or

(6) Construction of gates and related areas at which passengers are enplaned or deplaned and other areas directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport. These areas do not include restaurants, car rental facilities, automobile parking facilities, or other concessions. In the case of a project required to enable additional air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport, a project for constructing gates and related areas may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door, and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities adjacent to the gate.

(c) An eligible project must be adequately justified to qualify for PFC funding.

[Doc. No. 26385, 56 FR 24278, May 29, 1991; 56 FR 37127, Aug. 2, 1991; Amdt. 158-2, 65 FR 34541, May 30, 2000]

### § 158.17 Project eligibility at PFC levels of \$4 or \$4.50.

(a) A project for any airport is eligible for PFC funding at levels of \$4 or \$4.50 if—

(1) The project meets the eligibility requirements of § 158.15;

(2) The project costs requested for collection at \$4 or \$4.50 cannot be paid for from funds reasonably expected to be available for the programs referred to in 49 U.S.C. 48103; and

(3) In the case of a surface transportation or terminal project, the public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.

(b) In addition, a project for a medium or large airport is only eligible for PFC funding at levels of \$4 or \$4.50 if the project will make a significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the

impact of aviation noise on people living near the airport.

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### § 158.19 Requirement for competition plans.

(a) Beginning in fiscal year 2001, no public agency may impose a PFC with respect to a covered airport unless the public agency has submitted a written competition plan. This requirement does not apply to PFC authority approved prior to April 5, 2000.

(b) The Administrator will review any plan submitted under paragraph (a) of this section to ensure that it meets the requirements of 49 U.S.C. 47106(f) and periodically will review its implementation to ensure that each covered airport successfully implements its plan.

[Doc. No. FAA-2000-7402, 65 FR 34541, May 30, 2000]

## Subpart B—Application and Approval

### § 158.21 General.

This subpart specifies the consultation and application requirements under which a public agency may obtain approval to impose a PFC and use PFC revenue on a project. This subpart also establishes the procedure for the Administrator's review and approval of applications and amendments and establishes requirements for use of excess PFC revenue.

### § 158.23 Consultation with air carriers and foreign air carriers.

(a) *Notice by public agency.* Prior to submitting an application to the FAA for authority to impose a PFC under § 158.25(b) and for project approval under § 158.25(c), a public agency shall provide written notice to all air carriers and foreign air carriers operating at the airport except those air carriers that the public agency may choose to request not to collect PFC's as provided by § 158.11. The notice shall include—

(1) Descriptions of projects being considered for funding by PFC's;

(2) The PFC level for each project, the proposed charge effective date, the